

United States District Court
Southern District of Texas
FILED

APR 25 2001

Michael N. Milby
Clerk of Court

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

RAQUEL O. RODRIGUEZ
AND JOSE L. RODRIGUEZ

VS.

RIDDELL SPORTS, INC.
RIDDELL, INC.
ALL AMERICAN SPORTS CORPORATION
D/B/A RIDDELL/ALL AMERICAN
AND CHRIS HOODMAN

CIVIL ACTION NO. B-CV-96-177

RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE
TESTIMONY OF DR. LAWRENCE THIBAUT AND AYUB OMMAYA, M.D.

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Riddell, Inc. and All American and file this their Response in Opposition to Plaintiff's Motion in Limine pertaining to the testimony of Dr. Lawrence Thibault and Ayub Ommaya, M.D. and for such would say as follows:

I.

The Court previously granted Plaintiffs' Motion in Limine concerning Dr. Ommaya's testimony as to the age of the subdural hematoma based in part on the surgical pathology report of Dr. Robert V. Jones. Dr. Robert V. Jones is a neuropathologist with whom Dr. Ommaya is well acquainted.

Dr. Ommaya will testify that pathology reports such as that of Dr. Jones attached hereto and marked as Exhibit 1 are the type reasonably relied upon by neurosurgeons in making treatment decisions and determining in the etiology of certain brain injuries. Such reports are also commonly reviewed and relied upon by biomechanical engineers such as Dr. Thibault for clarification of medical issues and to assist in determining the

mechanism of injury.

II.

F.R.E. Rule 703 specifically broadens the basis for expert opinions to include sources of information they use regularly when not in court, thus a physician in his own practice bases diagnosis and treatment on information from numerous sources including statements of other doctors, technicians, diagnostic studies and interpretation of x-rays, ct scans, and MRIs by other physicians specialists. Reasonable reliance and validation of such underlying data is sufficient under Rule 703 to support the experts opinions (See Rule 703 and Advisory Committee notes.

Wherefore, premises considered, Defendants move the Court to reconsider it's previous ruling on Plaintiffs' Motion in Limine and allow the defense witnesses to testify in reliance on the surgical pathology report of Dr. Robert V. Jones pursuant to F.R.E. Rule 703.

Respectfully submitted,

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BY Robert Summers

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Attorneys for Defendant Riddell, Inc.

CERTIFICATE OF CONFERENCE

This is to certify that I had a conference with Plaintiffs' counsel, Rex Blackburn, and he refused to agree to this motion.

Robert Summers
Robert Summers

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above was forwarded by telefax transmission and certified mail, return receipt requested to counsel of record on this the 11th day of April, 2001.

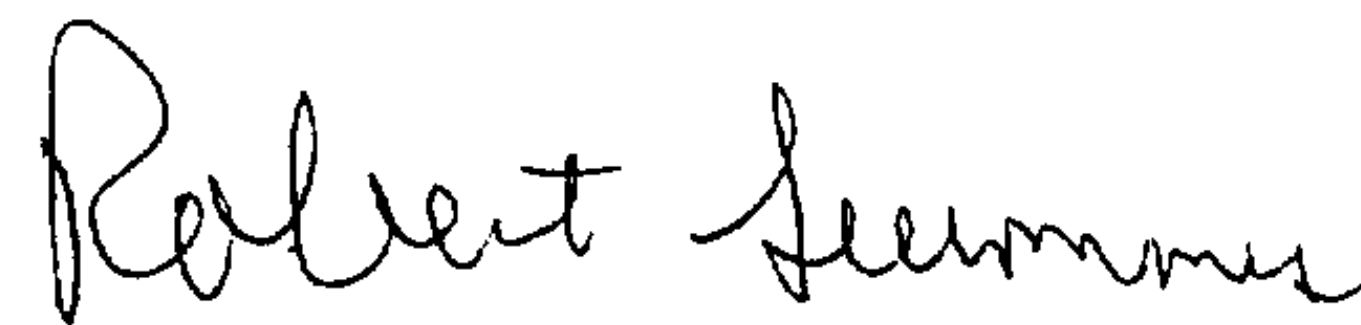
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A handwritten signature in cursive script that reads "Robert Summers". The signature is written in black ink and is positioned above a horizontal line.

Robert Summers

04/25/01 02:01P P.002

SURGICAL PATHOLOGY

Patient's Name: RODRIGUEZ, JOSE L	Surg Path #: 99-S-1578
Birth Date: 06/07/76	Medical Record #: (none entered)
Age: 25 Sex: M Race: U	Account #: (none entered)
Date Taken:	Service: PRIVATE PATIENT
Date accessioned: 03/03/99	Location: PRIVATE PATIENT
Date finalized: 03/04/99	
Submitting Physician: Robert V. Jones, M.D.	
Request from: Dr. Ayub K. Ommaya	

DIAGNOSIS

SUBDURAL SPACE, NOT FURTHER SPECIFIED, EVACUATION:

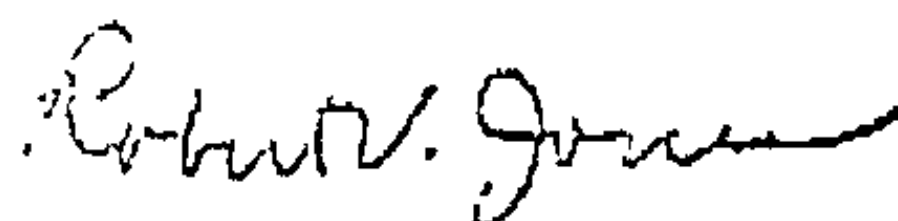
- : RECENT BLOOD CLOT (SUBDURAL HEMATOMA, CLINICAL)..
- : SEE MICROSCOPIC DESCRIPTION AND COMMENT.

COMMENT:

With the caveat that dating of subdural hematomas in surgical (as opposed to autopsy) material is problematic, the section suggests hemorrhages of two different ages. The relatively intact red blood cells infiltrated by polys and lymphocytes suggest a hemorrhage of approximately 24-48 hours duration, while the areas of fibroblast proliferation and macrophage infiltration are more consistent with hemorrhage of 4-5 days duration. Morphologic findings should be integrated with clinical and radiographic features for fullest interpretation.

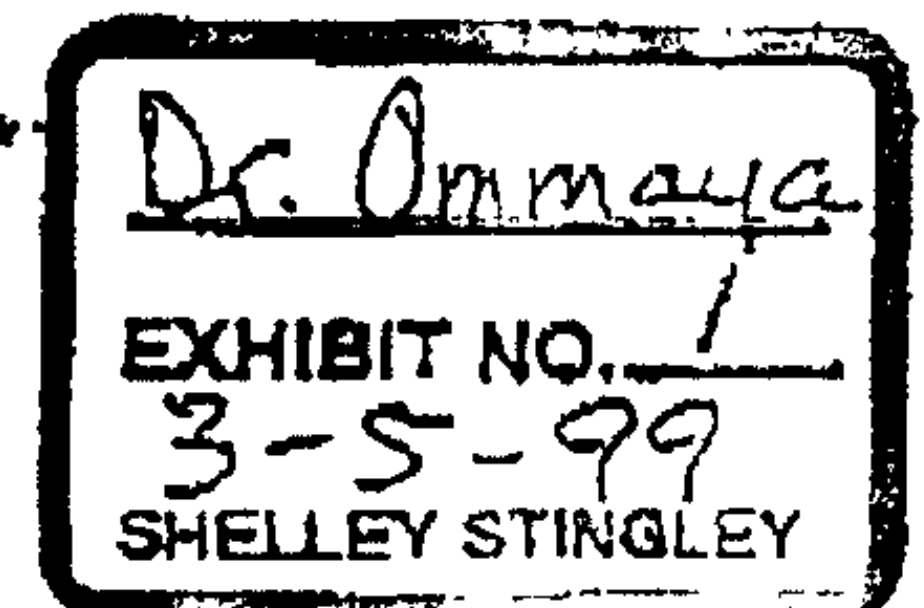
The glass slide will be returned to Dr. Ommaya.

Robert V. Jones, M.D.


 Robert V. Jones, M.D.

CURRENT SPECIMEN:

ONE H&E STAINED GLASS SLIDE



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501 23rd St., N.W. Washington D.C. 20037

Surgical Pathology	Room 4367N	Tel (202) 994-3383	Fax (202) 994-0293
Clinical Pathology	Room 5353N	Tel (202) 994-2682	Fax (202) 994-5522

04/25/01 02:01P P.003

SURGICAL PATHOLOGY

Patient's Name: RODRIGUEZ, JOSE L
Birth Date: 06/07/76
Age: 22 Sex: M Race:

Surg Path #: 99-S-1578
Medical Record #:
Service: PRIVATE PATIENT

HISTORY

(None Given)

GROSS DESCRIPTION

Received from Dr. Ayub K. Ommaya is a single hematoxylin and eosin-stained glass slide labeled S-95-5208 and a surgical pathology report from Valley Baptist Medical Center with the accession number S-95-5208 and the patient name "Rodriguez, Jose L."

RVJ:vvm

MICROSCOPIC DESCRIPTION

The microsection shows a relatively fresh blood clot characterized by intact erythrocytes infiltrated by polymorphonuclear neutrophils and lymphocytes. Delicate fibrin strands are present at the edges of red blood cell aggregates. In adjacent zones there are spindle fibroblastic cells with enlarged vesicular nuclei and mitotic figures. The fibroblasts are mostly arranged in a single layer, though rare foci show two- or multi-layer stacking. These fibroblasts are mixed with denser, more granular fibrin, cytolytic red blood cells, and macrophages with engulfed red blood cells.

ICD-9 CODES

L. M35000; M37100; TX1400

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--END OF REPORT--

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